

Amendments to House Bill No. 755  
3rd Reading Copy

Requested by Senator Vicki Cocchiarella

For the Senate Business, Labor, and Economic Affairs Committee

Prepared by Pat Murdo  
March 30, 2007 (8:34am)

1. Title, line 5.

**Following:** "TO"

**Insert:** "CERTAIN"

**Following:** "CERTIFICATES"

**Insert:** "; AMENDING SECTIONS 30-14-102, 70-9-802, AND 70-9-803,  
MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN  
APPLICABILITY DATE"

2. Page 1.

**Following:** line 8

**Insert:** "Section 1. Section 30-14-102, MCA, is amended to read:

"30-14-102. Definitions. As used in this part, the  
following definitions apply:

(1) "Consumer" means a person who purchases or leases  
goods, services, real property, or information primarily for  
personal, family, or household purposes.

(2) "Department" means the department of justice created in  
2-15-2001.

(3) "Documentary material" means the original or a copy of  
any book, record, report, memorandum, paper, communication,  
tabulation, map, chart, photograph, mechanical transcription, or  
other tangible document or recording.

(4) "Examination" of documentary material includes the  
inspection, study, or copying of documentary material and the  
taking of testimony under oath or acknowledgment in respect to  
any documentary material or copy of documentary material.

(5) (a) "Gift certificate" means a record, including a gift  
card or stored value card, that is provided for paid  
consideration and that indicates a promise by the issuer or  
seller of the record that goods or services will be provided to  
the possessor of the record for the value that is shown on the  
record or contained within the record by means of a  
microprocessor chip, magnetic stripe, bar code, or other  
electronic information storage device. The consideration provided  
for the gift certificate must be made in advance. The value of  
the gift certificate is reduced by the amount spent with each  
use. A gift certificate is considered trust property of the  
possessor if the issuer or seller of the gift certificate  
declares bankruptcy after issuing or selling the gift

certificate. The value represented by the gift certificate belongs to the possessor, to the extent provided by law, and not to the issuer or seller.

(b) The term does not mean include:

(i) prepaid telecommunications and technology cards, including but not limited to prepaid telephone calling cards, prepaid technical support cards, and prepaid internet disks that have been distributed to or purchased by a consumer;

(ii) a coupon provided to a consumer pursuant to any award, loyalty, or promotion program without any money or consideration being given in exchange for the card; or

(iii) a gift certificate usable with multiple sellers of goods or services.

(6) "Person" means natural persons, corporations, trusts, partnerships, incorporated or unincorporated associations, and any other legal entity.

(7) "Possessor" means a natural person who has physical control over a gift certificate.

(8) "Trade" and "commerce" mean the advertising, offering for sale, sale, or distribution of any services, any property, tangible or intangible, real, personal, or mixed, or any other article, commodity, or thing of value, wherever located, and includes any trade or commerce directly or indirectly affecting the people of this state."

{Internal References to 30-14-102: None.}"

**Insert: "Section 2.** Section 70-9-802, MCA, is amended to read:

**"70-9-802. Definitions.** In this part, unless the context requires otherwise, the following definitions apply:

(1) "Administrator" means the department of revenue provided for in 2-15-1301.

(2) "Apparent owner" means a person whose name appears on the records of a holder as the person entitled to property held, issued, or owing by the holder.

(3) "Business association" means a corporation, joint-stock company, investment company, partnership, unincorporated association, joint venture, limited liability company, business trust, trust company, land bank, safe deposit company, financial organization, insurance company, mutual fund, utility, or other business entity consisting of one or more persons, whether or not for profit.

(4) "Domicile" means the state of incorporation of a corporation and the state of the principal place of business of a holder other than a corporation.

(5) "Financial organization" means a savings and loan association, bank, banking organization, or credit union.

(6) "Gift certificate" has the meaning provided in 30-14-102.

~~(6)~~ (7) "Holder" means a person obligated to hold for the account of, or deliver or pay to, the owner property that is subject to this part.

~~(7)~~(8) "Insurance company" means an association, corporation, or fraternal or mutual benefit organization, whether or not for profit, engaged in the business of providing life endowments, annuities, or insurance, including accident, burial, casualty, credit life, contract performance, dental, disability, fidelity, fire, health, hospitalization, illness, life, malpractice, marine, mortgage, surety, wage protection, and workers' compensation insurance.

~~(8)~~(9) "Mineral" means gas; oil; coal; other gaseous, liquid, and solid hydrocarbons; oil shale; cement material; sand and gravel; road material; building stone; chemical raw material; gemstone; fissionable and nonfissionable ores; colloidal and other clay; steam and other geothermal resource; or any other substance defined as a mineral by the law of this state.

~~(9)~~(10) "Mineral proceeds" means amounts payable for the extraction, production, or sale of minerals or, upon the abandonment of those payments, all payments that become payable after abandonment. The term includes amounts payable:

(a) for the acquisition and retention of a mineral lease, including bonuses, royalties, compensatory royalties, shut-in royalties, minimum royalties, and delay rentals;

(b) for the extraction, production, or sale of minerals, including net revenue interests, royalties, overriding royalties, extraction payments, and production payments; and

(c) under an agreement or option, including a joint operating agreement, unit agreement, pooling agreement, and farmout agreement.

~~(10)~~(11) (a) "Money order" includes an express money order and a personal money order, on which the remitter is the purchaser.

(b) The term does not include a bank money order or any other instrument sold by a financial organization if the seller has obtained the name and address of the payee.

~~(11)~~(12) "Owner" means a person who has a legal or equitable interest in property subject to this part or the person's legal representative. The term includes a depositor in the case of a deposit, a beneficiary in the case of a trust other than a deposit in trust, and a creditor, claimant, or payee in the case of other property.

~~(12)~~(13) "Person" means an individual, business association, financial organization, estate, trust, government, governmental subdivision, agency, or instrumentality or any other legal or commercial entity.

~~(13)~~(14) (a) "Property" means tangible property described in 70-9-804 or a fixed and certain interest in intangible property that is held, issued, or owed in the course of a holder's business or, except as provided in subsection ~~(13)(b)~~ (14)(b), by a government, governmental subdivision, agency, or instrumentality and all income or increments from the property. The term includes property that is referred to as or evidenced

by:

- (i) money, check, draft, deposit, interest, or dividend;
- (ii) credit balance, customer's overpayment, gift certificate, security deposit, refund, credit memorandum, unpaid wage, unused ticket, mineral proceeds, or unidentified remittance;
- (iii) stock or other evidence of ownership of an interest in a business association or financial organization;
- (iv) bond, debenture, note, or other evidence of indebtedness;
- (v) money deposited to redeem stocks, bonds, coupons, or other securities or to make distributions;
- (vi) an amount due and payable under the terms of an annuity or insurance policy, including policies providing life insurance, property and casualty insurance, workers' compensation insurance, or health and disability insurance; and
- (vii) an amount distributable from a trust or custodial fund that is established under a plan to provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit sharing, employee savings, supplemental unemployment insurance, or similar benefits.

(b) The term does not include property that is held, issued, or owed by a local government entity, as defined in 2-7-501.

~~(14)~~ (15) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and that is retrievable in perceivable form.

~~(15)~~ (16) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession that is subject to the jurisdiction of the United States.

~~(16)~~ (17) "Utility" means a person who owns or operates for public use any plant, equipment, real property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas."

{ Internal References to 70-9-802: None. }

**Renumber:** subsequent sections

3. Page 2.

**Following:** line 3

**Insert:** "(g) gift certificate, 3 years after December 31 of the year in which the certificate was sold, but if redeemable in merchandise only, the amount abandoned is considered to be 60% of the certificate's face value. A gift certificate is not presumed abandoned if the gift certificate was sold by a person who in the past fiscal year sold no more than \$200,000 in gift certificates, which amount must be adjusted by November of each year by the inflation factor defined in

15-30-101."

**Renumber:** subsequent subsections

4. Page 3.

**Following:** line 28

**Insert:** "NEW SECTION. Section 4. {standard} Effective date -- retroactive applicability. [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to gift certificates issued or sold after September 30, 2005."

- END -